19 50.

File No. S. Belgaum 8/50

K Examined

Legal **DEPARTMENT**
A **BRANCH**

Subject:— Belgaum Suit

Civil Suit No. 357 of 1949.

Balasaheb Dagadu Phalke — Plff

Vs.

1) Executive Engineer P.W.D. Bel.
2) Province of Bombay. } — Defts.

P27F

For an injunction restraining defendants from recovering from the plaintiffs more than Rs 6-8-0 per month as rent — for the period from 5th May 1948 to 31st Oct — 1950 for the tea shops in the compound of the office of the Commissioner, S.D. or restraining defendants from allowing any other teashops to be run in the said compound

S. Belgaum 8/50

File No.

Bld. Scott. Bldg 24-8

S. Bel 8/50

C O N T E N T S.

Legal Department File No. S:Bel. 8/56.

Sr.No.	R.I./O.No.	Subject	Pages.

Suits Belgaum.

C. S. No. 357 of 1949.

B. D. Phulke

V/s

1) Executive Engineer P.W.D. Belgaum

2) The State of B'bay.

For an injunction restraining defts. from recovering from the plffs. more than Rs. 6-8-0 per month, for the tea-shop in the Compound.

1 - 40.

1-B

R. S. No. 357 of 1949.

In the Court of the Civil Judge, S.Dn, Belgaum.

1. Balasaheb Dagadu Phalke, caste Maratha age 25, Occ. tea shpp Keeper, Residence Belgaum. } PLFF.

VERSUS.

1. Executive Engineer, P.W.D. Belgaum.
2. The Province of Bombay. } DEFTS.

Claim for Jurisdiction and Court Fees Rs. 5/-

The above named plff states as under:-

1. Deft.No. 1 by virtue of his office has the duty of looking to the up-keep, letting etc. of the Government buildings at Belgaum. In execution of this duty he put up for auction a tea shop building in the Commisioner's compound, Belgaum, the said tea shop was formerly run by one Mr. Sadashiv Datar at a rental of Rs. 6-8-o per month

2. In the notice dated 8-10-1947, of the auction deft No.1 did not give a correct description of the shop to be auctioned. He simply notified that the tea shop in the compound of the Commissioner's office would be auctio-ed without specifying that the said shop was the one run by Mr. Sadashiv Datar.

3. Teh plff believing by the represantation of deft No.1 viz that the tea shop in the compound of the Commisioner's office was to be auctioned, bid at the auction and took the shop at the rent of Rs. 79-8-0 per month.

4. Lator on, plff was put in possession of Mr. Sada-shiv Datar's shop, but he found that the said shop was not the only shop run in the said compound and that there were four otheres run by different persons in the said compound. Owing to this competation, plff suffered heavi

5. Plff sent a representative to the Secretary to Government,P.W.D. Bombay requesting not to enforce the agreement of Rs. 79-8-0 per month against theplff but to take such standerd rent as may be just in the circumstances.

6. The said Secretary sent a reply dated 24th May 1949 to the plff as under:-

1. One shop run by Mr. Laxman Joshi is an old one. The saecond is given on rent. The remaining two are tea clubs.

2. Teh plff was not given possession on 1-11-47, the date notified, but that he was given possession on 1-5-48 as some repairs were required and deft No.1 refused to admit that plff suffered as the result of the delay on handing over the possession of the said shop to the plff.

3. That the rent bid at the auction should be paid by the plff.

7. Incorrect notification of deft 1 is a mis--representation of the true state of facts and being misled by that misrepresentation, plff took the bid at Rs. 79-8-0 per month believing that his would be the only shop in the compound of the Commis ioner's office.

8. Deft No.1 through the Secretary to the Govt. of Bombay, P.W.D. has given evasive replies to the just grievance of the plff. In fulfilment of the notification viz. the shop in the compound of the commisioner's office being auctioned, the deft No.1 ought to have closed the other tea shop in the said compound. So also he should have instisted on the clubs being run as Clubs only and they ought to have not been open for the public or deft No1 ought have not enforced to recover the rent from the plff more than Rs. 6-8-0 per month for which plff's tea shop was formerly let to Mr. Datar. As the deft No.1 has failed to do either, the plff has filed this suit to restrain the

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the deft No.1 to recover the rent more than Rs. 6-8-0 from the plff for a period from 1-5-1948 i.e. when the plff was put in possession to 30-10-1950 i.e when the auction lease expires or in the alternative to restrain him from alooving any other tea shop except that of the plff, to run in the compound of the Commissioner's office

9. Deft No. 2 has been made a party to this uit as he has retified the act of of deft No.1 as would be seen by the reply, dated 24th May 1949, given by the Secretary, P.W.D. Governemant of Bombay.

10. The cause of action for the suit arose on 24th May 1940 i.e when deft no.1 through the Secretary refused to perform the intended terms of the auction lease

11. This court has jurisdiction to try the suit as the subject matter of the suit is situated within the jurisdiction of this Court and as the contract was enteres into adn to be performed within the jurisdiction of this court.

12. The suit being an injunction suit, it is valu both for jurisdiction and Court fee at Rs. 5/- and the Court fee is paid on the that amount.

13. Plff prays:-

1. an injunction aginst the deft 1 to restrain him to recover from the plff more than Rs. 6-8-0 as rent per month for the period from 1-5-1946 to 30-10-1950 or in the alternative restrain him from allowing any of the tea shops except that of the plff to run in the compound of the Commssioner's office.

2. Amendment of the plaint, if necessary.

3. Costs of this suit.

4. Any other relief the Court deems necessary.

14. A two months' notice of this suit as required under section 80 of the C.P.C. has been given to both the defts.

dated 19th Sept. 1949. Sd. Pl for plff.

R.S.No.357/1949 5 7

In the court of C.J.S.Division,Belgaum

1. Balasaheb Dagdu Phalke of Belgaum (Plt)

Vs.

1. Executive Engineer,P.W.D.Belgaum)
) Dfts.
2. The Province of Bombay)
(Collector of Belgaum))

Claim Rs. 5/-

In this the application for the Plt. is as under :-

1. In the notice dated 8-10-1947 of the auction deft.No.1 did not give the correct description of the shop to be auctioned. He simply notified that the tea shop in the compound of the Commissioner's office would be auctioned without specifying that the said was the one run by Mr.Sadashiv Datar and would be one among other tea shops.

2. The Plt.believing by the representation of Deft.No.1 viz that the tea shop in the compound of the Commissioner's office was to be auctioned would be one that of the Plt. and no other shops bid at the auction and took the shop at Rs.79/8 per month as rent but subsequently the Plt. found that besides Plt's shop there ~~from~~ other shops run by different persons in the same compound.

3. The Plt.learnt that the Deft.No.1. with the help of Deft.No.2 is about to recover the rent from the Plt.for the said tea shop at Rs.79/8/- per month by attachment of moveables in Plt's shop and to eject him summarily under the Land Revenue Code. If this is done the Plt. would suffer heavily. Hence the Plt.prays that the defts. may kindly be restrained from either recovering the rent of the said shop at Rs.79/8/- per month or to eject the Plt.till the decision of this suit.

The necessary affidavit is made.

Pleader for Plt.
20-9-1949.

I,Balasaheb Dagadu Phalke of Belgaum today at Belgaum on solemnly affirm and make this affidavit that the contents mentioned above with application are true and correct to the best of my personal knowledge.

Received
4-10-1949

Notes :-

Mr.Phalke was fully aware that the shop to be auctioned was the one run by Mr.Datar as explained in the statement of the case. The description " tea shop in the compound of the Commissioner's office is very clear. He was also aware that there were other shops in the compound of the District Court as explained the statement of the case.

On receipt of the summons, the Civil Judge was requested under this office No.G-107 of 10-10-49 (copy attached) for an adjournment of the case by two months for filing the objections.

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Legal Department.
Belgaum Civil Suit No.357/1949.

A Tea-shop in the compound of the Commissioner's Office at Belgaum was given on lease by public auction. The plaintiff was the highest bidder at the auction who offered a rent of Rs. 79/- per month, and his bid was finally accepted. The plaintiff having given a rash bid and finding himself unable to meet his liability tried to back-out of the transaction on various excuses, mainly contending that he gave the highest bid under the impression that his shop would be the only shop in the neighbourhood, but that as there were other shops also he was suffering heavy losses through competion, and he was, therefore, not liable to pay rent of Rs. 79/- per month.

2. The suit is defensible. No guarantee was given to the plain iff under the conditions of sale or otherwise that his shop would be the only shop. The plaintiff ought to have made inquiries before giving his bid. The defence of the suit may be sanctioned on the lines of the accompanying brief.

RW 1/2/50

RLA 2/2

Seen/pwd 3/2

DC 4/2 3/2/50

ABD
11 pm to Legal Dept.

x No.1504
3-2-1952

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IN THE COURT OF THE CIVIL JUDGE
SENIOR DIVISION, BELGAUM.

R.S.No.357 of 1949.

1. Balasaheb Dagadu Phalke,
Caste Maratha age 25,
Occ. Tea-shop-keeper,
Residence, Belgaum. — Plaintiff.

V.

1. Executive Engineer, P.W.D.
Belgaum.
2. The Province of Bombay. — Defendants.

Following is the written statement of the defendants in this suit:-

1. The allegations in paragraphs 2 and 3 in the plaint are misleading and false. The description of the Tea-shop was correctly given in the Notice of Auction dated the 8th October 1947 and the plaintiff was very well aware of the identity of the particular shop the lease of which was to be auctioned.

2. With regard to the allegations in paragraph 4 of the plaint the Defendant submits that there was no stipulation in the conditions of auction sale nor was any undertaking given to the plaintiff that his shop would be the only shop in the Commissioner's compound and that no other Tea-shops would be allowed to be conducted in the vicinity.

3. There was no misrepresentation on the part of the Defendant No.1 as alleged by the plaintiff. Assuming without admitting that there was any misrepresentation the defendants submit that the plaintiff could with ordinary diligence and inquiry have discovered that there were other shops in the area besides the one for which he intended to give his bid in the auction sale.

4. Allegations in paragraphs 7 and 8 in the plaint are denied. No guarantee was given to the plaintiff that other shops or clubs in the District Court would be closed.

5. The plaintiff has filed this suit obviously with the intention of avoiding his liability under the lease executed by him. The suit is purely speculative and the defendants submit that it should be dismissed with costs.

6. The Defendant No.1 is neither a necessary nor a proper party to the suit. He is a public officer who could not be sued in his official capacity. His name should, therefore, be deleted.

District Government Pleader,
Belgaum.

I, District Government Pleader, Belgaum, do hereby declare that what is stated in paragraphs 1 to 6 above is true according to the information received and believed to be true. This verification is made at Belgaum on the day of 1950.

District Government Pleader,
Belgaum.

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Suits :

Belgaum.

For an injunction restraining defendants from recovering from the plaintiffs more than Rs. 6-8-0 per month as rent for the period from 1st May 1948 to 31st October 1950 for the tea-shop in the compound of the office of the Commissioner, S. D., or restraining defendants from allowing any other tea-shops to be run in the said compound.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 3572.

Bombay Castle, 14th March 1950.

Endorsement from the District Government Pleader, Belgaum, No. 03357, dated 21st November 1949 —Forwarding copy of letter of even number and date along with the papers in the suit noted in the margin; and requesting sanction to its defence.

IN THE COURT OF THE CIVIL JUDGE, (SENIOR DIVISION), BELGAUM.

Civil Suit No. 357 of 1949.

Balasaheb Dagadu Phalke ... ... Plaintiff;

versus

1. Executive Engineer, P. W. D., Belgaum ...
2. The State of Bombay ... ... } Defendants.

Memorandum to the District Government Pleader, Belgaum, No. 1851, dated 8th February 1950—Forwarding a copy of the brief with its accompaniments in advance.

AXB Leg H 176—1

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

Recd on 9

Original

P. M. LAD,
Secretary to Government.

G. R., L. D., No. 3572, dated the 14th March 1950.

To

* Public Works Department,
* The Collector of Belgaum,
The District Government Pleader, Belgaum (with two copies of the brief).

* With a copy of the brief.

No. of 1950.

Copy forwarded for information and guidance to

Issued on 22/6/50

Submitted after issue -
File in S. Belgaum/83 (new)

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BELGAUM CIVIL SUIT NO. 357 OF 1949.

Chronological Statement of Facts.

The suit is for an injunction restraining the Defendant from recovering from the Plaintiff more than Rs. 6-8-0 per month as rent for the period from 1st May 1948 to 31st October 1950 for the tea shop in the compound of the Office of the Commissioner, S. D., or, in the alternative, restraining the Defendants from allowing any other tea shops except that of the Plaintiff to be run in the compound of the Commissioner's office.

2. A portion of the servants' quarters and stables attached to the Commissioner's office was being leased to Mr. Sadashiv Waman Datar since 1938 for the purpose of running a tea shop at a monthly rental of Rs. 6-8-0 per month. On 1st October 1947 the Executive Engineer gave a notice to Mr. Datar that in accordance with clause 7 of the lease executed by him, his lease of the tea-shop would terminate from 1st November 1947. The Deputy Engineer was requested to lease the tea shop again by holding a public auction. On 8th October 1947 the Deputy Engineer published a notice of the auction of the lease of the tea shop for three years from 1st November 1947 to 30th October 1950. The auction was held on 20th October 1947 as previously notified and the conditions of the lease were read out at the auction and were signed by the Plaintiff and other bidders who were present.

File p. 1.

File p. 123.

File p. 121.

3. The Plaintiff offered the highest bid of Rs. 79 per month. His bid was provisionally accepted by the Sub-Divisional Officer and was reported to the Executive Engineer for final acceptance. On 31st October 1947 the Executive Engineer requested the Commissioner to state whether the Plaintiff was a suitable occupant and whether his bid may finally be accepted. On 26th January 1948 the Commissioner replied that according to G. R., P. W. D. No. 3008/36, dated 27th January 1944 Executive Engineers, who held auction, were authorised to accept the highest bids and that further action may be taken accordingly. The Commissioner was not able to express any opinion regarding the suitability of the Plaintiff as a tenant.

File p. 15.

File p. 33.

4. As the matter was under correspondence with the Commissioner and as the former tenant Mr. Datar had not vacated the tea shop possession of the shop could not be given to the Plaintiff on 1st November 1947. On 26th February 1948 the Deputy Engineer gave another notice to Mr. Datar calling upon him to vacate the shop on or before the 31st March 1948. On 11th March 1948 the Deputy Engineer informed the Plaintiff that possession of the shop would be given to him on 1st April 1948 subject to his executing a rent-note

File p. 37.

File p. 39.

notified the Plaintiff had made an application to the Executive Engineer on 3rd October 1947 requesting that officer to grant him the lease of this very shop on such rent as may be fixed by the Public Works Department. That application which is at page 13 of the file clearly shows that the Plaintiff was aware that the tea-shop in question was about to be given on lease by auction and that a notice had been given to the former occupant to vacate the same. In his subsequent application dated the 3rd November 1947, in which the Plaintiff complained against the possession of the shop having not been given to him on 1st November 1947, the Plaintiff did not complain about the alleged mis-description of the shop in the notice of auction. It is, therefore, clear that this contention is merely an afterthought and deserves no consideration.

4. His next contention is that he gave the highest bid of rent of Rs. 79 per month under the impression that this shop was the only shop within that area and that he was misled into this belief by a misrepresentation in the notice of the Executive Engineer. This contention is also false and should be denied. The Plaintiff apparently wants to take advantage of section 19 of the Indian Contract Act. That section provides that when consent to an agreement is caused by coercion, fraud or misrepresentation the agreement is a contract voidable at the option of the party whose consent was so caused. But there is an exception to that section which says that if such consent was caused by misrepresentation * * * the contract nevertheless is not voidable if the party whose consent was so caused had the means of discovering the truth with ordinary diligence. The notice of auction was given on 8th of October 1947 and the sale was actually held on the 20th October 1947. The Plaintiff had ample time and opportunity in the interval to make diligent inquiries to find out whether this shop was the only shop as assumed by him or whether there were other shops in the vicinity and whether it would be profitable to him from the point of view of business to take the lease of the shop by offering a bid of Rs. 79 p. m. The Plaintiff could have discovered the truth by exercising ordinary diligence and; therefore, even assuming without admitting that there was same misrepresentation as alleged by him, the Plaintiff nevertheless cannot avoid his liability under the lease executed by him.

5. It is next contended that the Executive Engineer ought not to have allowed any other shops to be conducted in the compound after the Plaintiff's lease was sanctioned. It should be pointed out that there was nothing in the conditions of auction sale nor was any undertaking given to him at the time of the auction that his shop would be the only shop within the locality. Apart from that, there was no other rival establishment in the compound of the Commissioner's office as alleged by the

Plaintiff. There was one Tea-shop near the Prant Officer's Office and there were two others in the District Court. The shop near the Prant Office was conducted by one Laxman Joshi and it was in existence even before the auction sale of the Tea-shop which was leased to the Plaintiff. The other two shops were the establishments of the Courts and the members of the Bar Association and they were not open to the public and were also in existence prior to the shop having been leased to the Plaintiff. The Plaintiff has, therefore, no right to object to the running of these establishments in other offices. No guarantee was given to him that his shop would be the only shop catering for all the Government offices in the area.

6. The Plaintiff has not made any grievance in the plaint about the possession of the shop not having been given to him on the 1st November 1947. If he raises this point, it should be pointed out that according to clauses 2 and 3 of the conditions of Auction sale, the sale was subject to the final sanction of the Executive Engineer and that under clause 3 the Executive Engineer had the power to sanction or not to sanction or to reject the bid for any reason he may think proper. The Plaintiff therefore, could not claim possession as of right until his bid was finally accepted. He was informed to that effect by the Deputy Engineer on 5th November 1947 (file page 19) and it was only on 11th March 1948 that the Plaintiff's bid was finally accepted (file page 39). The possession of the shop, therefore, could not be given to him on 1st December 1947 because the matter was under correspondence and also because of the previous tenant Mr. Datar had not vacated the shop till the end of March 1948. The Plaintiff was actually put in possession of the shop on 1st May 1948 and rent was directed to be recovered from him from that date only and the Plaintiff has, therefore, no grievance on this ground also.

For the above reasons it should be contended that the Plaintiff's suit fails and should be dismissed with costs.

before 25th March 1948 and crediting a security deposit of Rs. 158 being two months' rent as per conditions of the sale read out on the date of auction.

5. On 29th March 1948, the Plaintiff wrote to the Deputy Engineer complaining that as possession of the shop had not been given to him on 1st November 1947 he had suffered a loss of nearly Rs. 600, that two other persons were doing the business of supplying tea in the Commissioner's compound without a permit from the P. W. D. and that as the floor of the tea-shop contained several "hollows" it could not be used as a tea-shop and he therefore requested that the shop should be handed over to him after carrying out necessary repairs. The Deputy Engineer replied to him on 12th April 1948 that the two shops mentioned by the Plaintiff were clubs and were not open to the public, that the floor of the tea-shop had been repaired and he should therefore take actual possession immediately.

File p 93.

File p. 41.

6. On 13th April 1948, the Plaintiff sent another application to the Commissioner, S. D., alleging that he had not seen the terms and conditions of the auction at the time of giving his bid, that he gave the highest bid under the impression that his shop would be the only shop in the P. W. D. area to cater for all the offices, that possession of the shop was not given to him on 1st November 1947 and requesting that all other tea-shops in the area should be removed or he should be charged a rent of Rs. 6-8-0 only per month. The Plaintiff took possession of the shop on 1st May 1948. On 24th May 1948 the Executive Engineer informed him *inter alia* that the two shops in the compound of the District Court were not open to the public but were intended for the members of the bar and the judges and that only the shop in the compound of the Commissioner's office had been leased to him and that therefore his request could not be granted.

File p. 55.

7. On 5th June 1948, the Plaintiff submitted to the Superintending Engineer, Belgaum, another lengthy petition reiterating his grievances against the existence of other shops in the area and complaining against possession not having been given to him on 1st November 1947. On 25th January 1948, the Superintending Engineer informed him that his allegations that the two clubs attached to the District Court were open to the public were found baseless, that as he had taken possession of the shop from 1st May 1948 he would have to pay rent from that day only and that there was no condition attached to the auction sale that no other tea-shops in the compound of other office would be allowed.

File p. 57.

File p. 117.

8. On 2nd February 1949, the Plaintiff submitted another application to Government in the Public Works Department. That application was also rejected by Government in their letter

File p. 125.

File p. 149.

No. S. 92/30187-A (I) (P.W.D.) dated 24th May 1949, and it was directed in the same letter that as the Plaintiff had not paid rent from 1st July 1949 his lease should be terminated from that date.

9. On 15th July 1949 the Plaintiff gave notice of suit under section 80 of the Civil Procedure Code and on 20th September 1949 he filed the suit in the Court of the Civil Judge, (Senior Division), Belgaum.

Grounds of Defence.

The Plaintiff's contention in the plaint are that the notice of auction dated the 8th October 1947 did not give a correct description of the shop to be auctioned; that it simply stated the tea shop in the compound of the Commissioner's Office without specifying that it was the shop conducted by Mr. Datar; that the Plaintiff was misled into giving the highest bid by the misrepresentation of the Executive Engineer, Defendant No. 1, that the shop notified was the only shop in the compound of the Commissioner's Office, that later on the Plaintiff found that there were four other shops conducted by different persons in the said compound and that owing to keen competition he suffered heavily; that Defendant No. 1 ought to have closed all the other tea-shops in the said compound and he ought to have insisted on the tea-clubs being run as 'clubs' only and not open to the public or that in the alternative not more than Rs. 6-8-0 per month should have been recovered from the Plaintiff as rent which was formerly recovered from Mr. Datar.

2. It is perfectly obvious that the Plaintiff has filed this suit with the object of avoiding his liability under the terms of the lease. Having given a rash bid of Rs. 79 per month he found himself in difficulties and he has, therefore, brought this purely speculative suit in the hope of avoiding his commitments under the lease or obtaining as many concessions as possible in the enforcement thereof.

3. His contention that there was no proper description of the tea-shop in the notice of auction and that he had been misled by an alleged misrepresentation by the Executive Engineer has no substance whatever. The notice dated the 8th October 1947 clearly described the tea-shop as one in the compound of the Commissioner's Office, Belgaum. The tea-shops in the compound of the Government Offices are described as, for example, the Tea-shop in the compound of the Collector's Office, or in the compound of the Commissioner's Office and so on. Hence the description of the shop in the notice was quite sufficient. Besides, there is sufficient evidence to show that the Plaintiff was himself aware of the shop which was being auctioned. Even before the auction of the lease of the shop was

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Civil Appeal No. 349 of 1951

In the Court of District Judge, at Belgaum.

1. Balasaheb Dagadu Phalke of Belgaum. ... .. Appellant (Ori. Deft)

Versus

1. Executive Engineer, P.W.D. Belgaum.
2. The Province of Bombay. ... ... Respondents (Ori. defts)

Claim Rs. 5-0-0 for court fees and Jurisdiction.

Being aggrieved by the judgement and decree passed on 7-9-1951 by the Civil Judge, Senior Division, Belgaum - in O.S.No. 357/1949, the above named appellant humbly begs to prefer this appeal against the said judgement and decree on the following among many other grounds:-

1. The judgement and decree of the lower court is against law, equity and evidence in the case.

2. The lower court misconstrued Ex. 60, the auction notice.

3. The tea shop in the compound of the Commissioner's office leads to the natural inference that the Commissioner officer has a compound and in that compound there would - be the only tea shop.

28 AU 1954

4. It ought to have been held that the appellant was misled by relying upon the wording "the tea shop" in Ex. 60.

5. It ought to have been held that there was misrepresentation on the part of Ex. 83 Over-seer Shri.Pant-Balekundri in as much as he has deposed that he could not give the description of the tea shop to be auctioned.

6. When the suit shop could have been described by P.W.D,No.or one occupied by Datar, it ought to have been

held that there was deliberate omission on the part of the Respondent 1 to give description of the suit shop in auction notice.

7. It ought to have been held that mere convention that the Commissioner's office has a compound is not sufficient in itself to hold that the Commissioner's office has compound unlessit is shown that such a convention is known to the public at large or at least the bidders.

8. Lower court erred in holding that the appellant had knowledge of the shop to be auctioned.

9. Lower court erred in holding that as the appellant has knowledge of the shop to be auctioned, he was not informed at the time of auction that the suit shop would be the only shop in the vicinity of the commissioner's office.

10. The lower court ignored the fact that the suit shop was not attracting more business than any other shop in the same locality. In the avsence of such proof it ought to have been held that the appellant knew at the time of bidding that the shop would be the only shop in the locality.

11. The lower court ignored that at the time of - action of the suit shop there was one more tea shop not far off from that of suit shop. The rent of this is - Rs. 6/8/0 and that of the suit shop was the same.

12. The lower court ignored that no explainantion is offered as to why the suit shop was auctioned.

13. The lower court ignored that before the suit shop was auctioned, there was correspondence between the Commissioner and the Executive Engineer as this

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as this correspondence is not coming gorward, it ought to have been held that the Executive Engineer and the Commissrioner wanted to retain tea shop and close otheres.

14. The lower court ignored that the appellant -- immidiately after taking the possession of the suit shop complained of the other tea shops being allowed to run - and [illegible] inquiry it was found that 2/3 other tea shops were running in the locality in whixh the suit shop is situated.

15. The lower court ignored that if there was no - understanding between the parties that the suit shop would be the only shop in the locality, the appellant would have not complained and there would have been no enquiry by Respondent 1.

16. The lower court failed to give due weight to the evidence of Ex.81, a clerk from the City Survey Office who has deposed that the Commissioner's office has no compound.

17. The lower court has misconstrued the provisions of sec. 18 of the Indian Contract Act. Under that, it is not necessary that misrepresentation must be in the mind of the contracting parties at its initiation stage.

18. Under sec. 18 of the Indain Contract Act, if the evidence recorded in the case disclose that the contract has operated to the advantage of one party and to the prejudice of the other, the misrepresentation can be presumed(3 Bom. 242 (267 para 2).

19. The lower court is wrong in holding that the case is covered sections 18 and 19 of the Act.

20. The lower court is wrong in believing the witness of the respondents and disbelieving that of the appellant.

21. Proper inferences have not been drawn and those that are drawn, are erroneous.

22. The lower court is wrong in holding that respondent No.2 is not a necessary party.

On these and many other grounds, the appellant prays that the judgement and decree of the lower court be set aside and the appeal be allowed.

The adress of the appellant is the same as in the lower court.

The certified copies of judgement and decree are annexed herewith.

Belgaum.
15-10-1951.

Drafted and Presented
by
sd. T.S.Sakhalakar,
Pleader.

25-29-95

Received on :- 19-9-1949

Registered on :- 19-9-1949

Decided on :- 7-9-1951.

Duration:-

In the Court of Civil Judge, S.Dn., at Belgaum.

Reg. O.S.No. 357 of 1949.

Ex.

Shri. Sakhalkar. 1. Balasaheb Dagadu Phlake Caste maratha age 25y occ. Tea shop keeper, of Belgaum, ... Plff.

against.

B.V.Jakati. 1. Executive Engineer, P.W.D. Belgaum.

2. The Province of Bombay. ... . Defts.

Claim Rs:- 5/- for court fee and jurisd -ction.

The plff sues for an injuction restraining Deft 1 to recover from him more than Rs. 6-8-0 as rent per month for for the period from 1-5-1948 to 30-10-1950 or in the alternative, from allowing any of the tea shops except that of the plff to run in the coumpound of the Commissioner's Office - and for costs alleging that Deft 1 our a Tea shop in the - Commissioner's compoxund for sale by public notice dated - 8-10-1947, that in the notice it was specified that the Tea-shop run by one Datar was only to be auct doned, that Mr. Datar was paying Rs. 6-8-0 per month as rent, that the plff bade at the auction the Tea shop lying in the compund of the Commissioner' at Rs. 79-8-0 per month, that later on, plff learnt that there was 4 Tea shops in the said compound, that plff suffered heavily on account of the running of the other Tea shops, that plff represented the matter to the Sectetary P.W.D. Department on 24-5-1949, that plff was given possession on 1-5-1948 instead of on 1-4-1947, that Deft 1 sought to - have closed the other Tea shops in the said compound, that

P.T.O.

that Deft 1 is not entitled to more that Rs. 6-8-0 per month from him, that legal notice has been served on the Government of Bombay, that the cause of action arose on 24th May 1949.

Deft 2 by his W.S. (ex. 19) contends - that the description of the Tea- shop was correctly given in the notice of action dated 8-10-1947, that the plff was aware of the identity of the shop the lease of which was to be auctioned, that there was no condition in the auction sale to the effect that the other tea-shops running in the - vicinity would be stopped, that there was no misrepresentation caused by Deft 1 , that plff would have with ordinary deligence and inquiry discovered that there were other tea-shops in the area besides the one for which he intended to give his bid in the auction sale, that no guarantee was given to the plff, that the other tea-shops or clubs in the District court would be closed, that Deft 1 is not a necessary party, that the suit should be dismissed with costs.

Deft 1 adopts the contention of Deft 2 vide pursis Ex. 21.

The issues for decision are:-

1. Whether plff proves the misrepresentations caused by Defts at the time of auction of the Teashops as alleged in paras 2, 3 and 7 of plaint ?

2. Whether plff proves that he was put to a loss on account of such misrepresentation ?

3. Whether Deft 1 is a necessary party and liable to plff ?

4. Whether plff is entitled to the injuction as sought ?

My findings are :-

1. No.

3. No.

4. As per order.

Reasons

1. Ex. 82 the Survey map drawn in 1915 by the - Survey Office. It contatains all Government Offices, lik Commissioner's Office, Collector's Office, District . Jud e's Office, Civil Judge's Office and Local Board's Office Etc. Plff's witness (Ex. 81) wh. is a City - Surveyor has been examined to prove it. Each Government building bears a different City Survey No. The Commissio -ner's Office and its branch officers bears City Survey No. 3922. The Collector's office and its branch Office bears City Survey No.3921. 3920 and 3920/1. The printed return No. of the Commissioner's Offices 145/1 and that of Collector's office, No. 2/1, vide Ex. 85. J st behind the Commissioner's officethere is a small rectagle build -ing in which the dead stock of that office is tored. Its rinted Return No. is 145/2 . Just behind this - rectagle building there is one rectangle bulidin; shown in dotted lines, in which there are 4 rooms. Its rinted return No. is 145/3. In the first room there is tea-sho which is in dispute; This tea shop was occupied by one Datar in 1947. In the second room the Chowkdar of the Commissioner's Office stays. In the third room, the .- Hawaldar of the Commissioner's Office stays. In the - forth room , the Motor is kept and it is used as a Moto Garrage.

2. Just near City No. 3920 called Huzur Khajina, there is a samll rectan le bu ilding whic is marked printed No. 2/17, vide ex. 85 . In that - building, there is another Tea shop which was occupied by one Laxmi Joshi.

3. Before entering into the merits of the case, it is worth while to bear in mind the facts that led to the dispute between the parties. Deft - No.1 is the Executive Engineer of P.W.D. Deft No.2 is Government. The former owner(Datar) of the disputed tea Shop paying Rs. 6-8-0 as rent to Deft No. 1. On 1-10-1947 the Executive Engineer Belgaum served notice (Ex. 63) upon Datar to vacate the premises from 1-11-1947. He - requested therein the Deputy Engineer to lease out the Tea shop by holding a public auction . On 8-10-1947, the Deputy Engineer, published the notice in connection with the auction sale of the tea shop for 3 years from 1-11-1947 to 30-10-1950., vide Ex. 68. The auction was held by the - -Overseer Shri Balekundrikar on 20-10-1947 at the office of the Deputy Engineer and the conditions of slaes were read out to the bidders before hand, by the said Overseer, vide conditions of sale Ex. 65 dated 20-10-1947. Four - bidders including plff and Datar have signed below the - conditions in the sale that the lease was to be granted subject to the sanction of the Executive Engineer.

4. Plff offered bid of Rs. 79/- per mont.. which was the highest bid. On 31-10-1947, the Executive - Engineer asked the Commissioner by letter (ex.66) dated - 31-10-1947 to state whether plff was suitable occupant and whether his bid may be finally accepted. On 26-1-1948, the Commissioner replied by letter Ex. 67 that he was unable to certify to the fitness of plff as a tenant. On 26-2-1948, the Deputy Engineer served another notice (ex.68) on Datar calling upon him to vacate tho shop on or before 31-3-1948 On 11-3-1948, the Deputy Engineer informed plff by letter - (Ex. 69) that possession of the suit shop will be given to him on 12-4-1948 subject to the executing the rent-note before 25-3-1948 and credit Rs. 148/- by way of 2 months rent in advance as per conditions of sale.

5. On 29-3-1948, the plff complained by an application (Ex. 70) to the Deputy Engineer on the follwoing grounds:-

A. That he had suffered a loss of nearly Rs. 600/- on account of the possession, not being delivered on 1-11-1947 as stipulated.

B. That other persons are supplying tea in Commisssion -er's compound without the permit from P.W.D.

C. that the floor of the tea shop in dispute was not in good condition.

D. that the possession cannot be accepted till the necessary repairs are carried out.

The Deputy Engineer replied on 12-4-1948 by Ex. 71 that the floor of the tea shop had been repaired and that the actual possession should be taken immidiately.

6. On 13-4-1948, the plff sent another application to the Executive Engineer alleging that he had not seen the terms of the auction sale, that he gave the highest bid under the impression that the other tea shops would not run in the said compound.

7. Plff took possession of the tea shop on 1-5-1948. The Deputy Engineer replied on 24-5-1948 to plff's application dated 13-4-1948 and rejected his request vide Ex. 72. On 25-1-1948, the Superintend Engineer informed the plff that his request cannot be granted, vide Ex. 74. On 22-2-1948. plff submitted another application (Ex. 75) to the Secretary to the Government of P.W.D. mentioning therein his present complaint. The Government by letter (Ex.76) dated 24-5-1949 rejected the request of the plff.

8. On 15-7-1949 the plff served a notice of suit under section 80 of C.P.Code, vide Ex. 61 and filed this suit on 20-9-1949.

9. Issues 1 and 2 :- The case of plff as put forth by him at ex. 69 is that Deft No.1 represented to him at the time of of the auction sale that one tea shop in the Commissioner's compound would be auctioned and that the other tea shops running in that compound would be stopped. According to his notion , the Government intended to run only one tea shop was put to sale. Relying upon such representation, the plff(ex.79) adds that he gave the highest bid of Rs- 79-8-0 including the water charges. His complaint to that after the auction sale of one of these 2 tea ships, in all 3 Tea sh ps to run in the vicinity of the Commissioner's office. According to him, the mis-representation was caused to him by the over seer of the P.W.D. who conducted the auction sale. Plff pleads ignorant of the fact that it was the tea shop occupied by Datar that was going to be sold in auction.

10. The burden of proving the alleged misrepresentation falls upon plff havily. Plff's learned pleader draws my attention to section 18 clauses 2 and 3 of Contract Act. In this case, not only that section is relevant but section 19 and its exception are also relevant. But apart from the legal aspect of the case, it is partinent to note that plff did not lead any oral or documentary evidence on the point of the alleged misrepresentation. Plff has cited Kalingayya at Ex. 80, who used to purchase the green grass growing around the several Government Offices per year for the sake of his cattle. This deponent is made to speak that there is no separate compound to the Commissioner's Office. Another witness of plff is City Surveyor Officer by name Lingangouda (Ex. 81). He has produced the survey map

map. (ex. 82) and is of opinion that there is no separate compound for each Government offices located here. These two deponents do not improve the case of PLFF at all.

11. PLFF is trying to take undue advantage of the description of the shop in the public notice of auction sale, vide Ex. 64 dated 8-10-1947. In that notice ~~advertisement~~ a tea shop in the Commissioner's compound was described. The City Survey No. was not described in it and also in the conditions of actual sale, vide ex. 65. But in the rent note(ex. 78) dated 1-5-1948 passed by PLFF to P.W.1. , the printed return ~~no~~ No. 146/3 was described. It is true from Ex. 64 and 65 that the City S.No or the printed return No. of the disputed tea shop lying in the compound of the Commissioner were not specifically mentioned. But such omission was not sufficient to create any such misrepresentation in the mind of the bidders including the PLFF as regards the exact shop that was going to be auctioned. PLFF new before hand that a notice was served on Dafer to vacate the tea shop occupied by him and not upon Joshi who occupied a tea shop in the Collector's compound. It is true that there are n compounds around the Commissioner's ~~compounds~~ offices and the Collector's offices. But the general belief of the public is that the Commissioner's office and its branch offices are supposed to be located in separate compounds, vide ex. 83.

12. If this general belief of the public as disclosed by the over seer(ex. 83) is taken into consideration, it would follow that there was only one tea shop in Commissioner's compound occupied by Dafer and another tea shop in Collector's compound which was occupied by Joshi. So there was nothing wrong in the public notice and the auction conditions, vide exs. 64 and 65.

The public notice (ex. 64) and the conditions of sale ex. 65 were clearly denote to the bidders that the shop in the Commissioner's compound which was occupied by -- Datar, was only the tea shop that was going to be auctioned and not the shop occupied by Joshi in the compound of the Collector.

13. Besides, it appears from plff's letter ex. 77 dated 3-10-1947 i.e before the auction sale that the plff knew very well that the diputed tea shop only was going to be auctioned by the end of that month. The significant portion of that letter is worth noting. It runs as below:-

> There is teas shop located in ~~the offices~~ one of the rooms attached to the Commi--ssioner's Office. Now it is understood that a notice has been issued to the - sho keeper that his lease would be -- terminated by the end of this month. It is also understood that the lease - of the shop is to be sold by public - auction. I understand that the rent of the shop is to be fixed by the P.W.D. and the shop keeper is to be selcted by the Commissioner. I am willing to pay the rent that would be fixed by the - P.W.D.. I, therefore, request that the shop may please be given to me on the rent that will be fixed by the P.W.D.

14. From the above passage, it is crystal clear, that the plff new Before the auction notice and the - auction sale that there was only one tea shop occupied by Datar in the Commissioner's compound and that was the shop of Datar that was going to be auctioned. Plff, therefore, has no ground now to complain that he was labour

labouring under an illusion that there were two shops in the commissioner's compound and that one of those two shops was going to be auctioned at the total abolition of the otherx tea shop. The story set up by plffis, - therefore, appeafs to be most fantastical. This story saw the day-light on 13-4-1948 on which date plff complained to the Deputy Engineer by an application which is not worth coming on record. However, this story has been - shattered to peices by theoverseer(ex. 83) and Datar (ex.86) who figure at the witnesses of Deft No.2. The over seer (ex. 83) and Datar (Ex. 86) are emphatic in stating that it was the dipputed shop that was purchased by plff and - that no understanding was given to him by the P.W.D. Office that the tea shop of Shri Joshi lying in the Collector's - coumpound would be stopped completely. The deponents -- (eds. 83 and 86) are disinterested persons and deserve to be inclined to believe the story of plff and to hold that a misrepresentation on the line suggested by plff was caused to him at the time of the auction dale. The result is that plff was not put to ny loss. My findings on issues 1 and 2 are accordingly.

15. Issue No. 3:- Deft 1 is not a necessary party. My findings on the 3rd issue is accordingly.

16. Issue No. 4:- Plff and fails and hence the following order. My findings on the 4th issue is accordingly.

Order.

Suit dismissed. Plff to pay the costs of Defts 1 and 2 in one set and bear his own costs.

sd.

Belga m.

Civil Judge, S.Dn., Belgaum.

7-9-1951.

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Suits: Belgaum.
For an injunction restraining defendants from recovering from the plaintiffs more than Rs.6-8-0 per month as rent for the period from 1st May 1948 to 31st October 1950 for the tea-shop in the compound of the ~~office of the~~ office of the Commissioner, S.D., or restraining defendants from allowing any other tea-shops to be run in the said compound.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 4612
Bombay Castle, 27th March 1952.

Read G.R. L.D. No.3572 dated the 14th March 1950.

Letter from the District Government Pleader, Belgaum No.J.262, dated the 10th September 1951, stating that the suit noted in the margin was decided by the Civil Judge S.D. Belgaum, on 7th September 1951, when the following order was passed :-

In the Court of the Civil Judge, (Senior Division), Belgaum. Civil Suit No.357 of 1949. Balasaheb Dagadu Phalke... ... ... Plaintiff; Versus. 1. Executive Engineer, P.W.D., Belgaum ...) 2. The State of Bombay... ... ...)	Defendants.

"Suit dismissed. Plaintiff to pay the costs of Defendant 1 and 2 in one set and bear his own costs".

Letter from the Collector of Belgaum No.L.A.W/853, dated the 14th February 1952, forwarding uncertified copies of the judgment and stating that the plaintiff in the suit noted in the margin has filed appeal No.349 of 1951 and requesting sanction to its defence.

RESOLUTION: (1) The result of the suit is recorded.

(ii) Sanction is accorded to the defence of the Civil Appeal No.349 of 1951 in the Court of the District Judge, Belgaum on the lines of the brief accompanying Government Resolution, Legal Department, No.3572 dated the 14th March 1950 and the favourable grounds contained in the judgment of the Civil Judge, Senior Division, Belgaum dated the 7th September 1951.

By order of the Governor of Bombay,

R.T. Katarki,
Deputy Secretary to Government.

To The Public Works Department,
The Collector of Belgaum,
GKV. The District Government Pleader, Belgaum.

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